

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

United States Can Company,

Complainant,

v.

Southern California Edison Company,

Defendant.

Case 01-08-018
(Filed August 3, 2001)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Summary

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure,¹ this ruling sets forth the procedural schedule, assigns a presiding officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held on October 19, 2001.

Background

On August 3, 2001, United States Can Company (US Can) filed this complaint against Southern California Edison Company (Edison) alleging that Edison seeks to assess an excess energy charge for US Can's failure to interrupt

¹ Unless otherwise indicated, all citations to sections refer to the Public Utilities Code and citations to rules refer to the Commission Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

service as requested by Edison. US Can and Edison are parties to a Contract for Interruptible Service (Contract) dated May 12, 1995. Pursuant to the terms of this contract, Edison is to provide interruptible electric service to US Can at its facility in Commerce, California. US Can is to reduce the demand imposed on its electric system upon receipt of a notice of interruption from Edison, or pay an excess energy fee.

US Can is alleging that Edison claims it notified US Can to interrupt service on several occasions between November 8, 2000 and December 11, 2000, and when US Can did not reduce its demand, Edison billed US Can for an excess energy charge of \$76,306.50. US Can claims it did not receive the interruption notices; Edison contends it has records that prove notice was given.

Ruling to Meet and Confer

On September 14, 2001, the assigned Administrative Law Judge (ALJ) issued a ruling setting a PHC and requiring the parties to meet and confer before the PHC to see if they could narrow the focus of the proceeding. The ruling directed the parties to discuss numerous topics that included US Can and Edison's respective obligations under the contract, notification to interrupt by Edison, compliance/non-compliance by US Can, and past history between the parties vis-à-vis notification to interrupt.

The parties complied with the meet and confer order and filed a Joint Case Management Statement (JCMS) in advance of the PHC. Through the efforts of the parties at the meet and confer, the scope of the proceeding was significantly narrowed.

Scope of the Proceeding

Based on the JCMS and the representations of the parties at the PHC, it appears that the key factual disagreement between them is:

Does Edison have proof that it gave notice to US Can to reduce the demand on its electric system on the dates in question, and was the notice sufficient to trigger an excess energy charge when US Can failed to interrupt its service.

Parties are reminded that they must limit their testimony at evidentiary hearing to matters involving disputed issues of fact. Testimony that presents legal or policy argument may be stricken. Parties will have an opportunity to address matters of law and policy in briefs.

Discovery

The Commission will not impose a discovery plan on the parties to this complaint proceeding. Proponents may make reasonable discovery requests and recipients should strive to comply with them, both in a timely fashion. The parties should attempt to resolve any discovery disputes with a good faith meet and confer. If that attempt does not resolve the dispute, the parties are to either e-mail or conference call the ALJ for resolution of the dispute. Written motions may only be filed if the parties' meet and confer and the ALJ's conference are both unsuccessful in resolving the dispute. The Commission generally looks to the California Code of Civil Procedure for guidance in resolving discovery disputes. The ALJ's e-mail is cab@cpuc.ca.gov.

Mediation

Mediation by a trained ALJ is available if the parties are desirous of pursuing this avenue of possible resolution. There must be mutual consent to mediation, and mutual agreement on the mediator. If mediation occurs but does not result in a successful resolution of this case, the parties may resume the formal, adjudicatory track.

Schedule

The schedule for this proceeding is as follows:

Date	Event
January 30, 2002	Concurrent Opening Testimony Served
February 15, 2002	Concurrent Rebuttal Testimony Served
March 15, 2002	Evidentiary Hearing at 320 West Fourth Street, Suite 500, Los Angeles, California 90013
April 15, 2002	Concurrent Opening Briefs
April 30, 2002	Concurrent Reply Briefs

It is my goal to close this case within the 12-month statutory timeframe for resolution of adjudicatory proceedings and this schedule meets that goal. At this time, I foresee no extraordinary circumstances that would warrant an extension of the schedule.

Category of Proceeding and Need for Hearing

This ruling confirms this case is adjudicatory scheduled for hearing, as preliminarily determined in the Instructions to Answer.

Assignment of Presiding Officer

ALJ Carol Brown will be the presiding officer.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under §1701.2(b) and Rule 7.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.

3. The presiding officer will be Administrative Law Judge Carol Brown.
4. This ruling confirms that this proceeding is adjudicatory scheduled for hearing.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Dated October 26, 2001, at San Francisco, California.

/s/ CARL WOOD

Carl Wood
Assigned Commissioner

/s/ CAROL A. BROWN

Carol A. Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated October 26, 2001, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.